

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CURTIS SPIDELL)	
)	
PLAINTIFF)	
)	
VS.)	CASE NO. 3:07cv874-MHT
)	
MIDLAND CREDIT)	
MANAGEMENT, INC. and)	
MRC RECEIVABLES CORP.)	
)	
DEFENDANT)	

MOTION TO REMAND

Plaintiff moves this Court to remand this action to the Circuit Court of Randolph County, Alabama, where it was originally filed. As grounds for this Motion, the Plaintiff shows unto this Court as follows:

1. This case was filed in the Circuit Court of Randolph County, Alabama, on or about August 27, 2007.
2. On or about October 1, 2007, Defendant filed its Notice of Removal alleging that this Court has jurisdiction over this amount based on diversity jurisdiction because the Plaintiff and Defendant are residents of different states and alleging that the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and cost.

3. There is no diversity jurisdiction because the amount in controversy does not exceed \$75,000.00 exclusive of interest and cost. Attached hereto is the Affidavit of John A. Tinney, Attorney for Plaintiff Curtis Spidell. The Affidavit conclusively establishes that at the time this lawsuit was filed there was no intention to recover in excess of \$75,000.00, exclusive of interest and cost. The Plaintiff conclusively establishes that he will not ask nor accept more than the sum of \$75,000.00 exclusive of interest and cost.

4. Because the amount in controversy does not exceed \$75,000.00, exclusive of interest and cost, this Court does not have jurisdiction over this case.

WHEREFORE, Plaintiff Curtis Spidell moves this Court to remand this case to the Circuit Court of Randolph County, Alabama, where it was originally filed because this Court lacks subject matter jurisdiction over this controversy.

s/ John A. Tinney

John A. Tinney TIN005
Attorney for Plaintiff
Post Office Box 1430
Roanoke, Alabama 36274
(334) 863 8945

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

F. E. McRae, III
McGlinchey Stafford, PLLC
Suite 1100 - City Centre South
Post Office Drawer 22949
Jackson, Mississippi 39225-2949

Respectfully submitted,

s/ John A. Tinney

John A. Tinney
Attorney for Plaintiff
Post Office Box 1430
739 Main Street
Roanoke, Alabama 36274
Phone: (334) 863-8945
Fax: (334) 863-7114

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CURTIS SPIDELL)	
)	
PLAINTIFF)	
)	
VS.)	CIVIL ACTION NO.
)	3:07cv874-MHT
MIDLAND CREDIT)	
MANAGEMENT, INC. and)	
MRC RECEIVABLES CORP.)	
)	
DEFENDANT)	

AFFIDAVIT OF JOHN A. TINNEY

Comes now John A. Tinney, Attorney for Plaintiff Curtis Spidell, and having been duly sworn, deposes and says on oath as follows:

1. My name is John Tinney and I am over the age of 19 years and of sound mind, and I have personal knowledge of the matters contained herein.

2. I drafted the Complaint that was filed in the Circuit Court of Randolph County, Alabama.

3. At the time the Complaint was drafted the Plaintiff had no intention of seeking and does not seek in excess of \$75,000.00, exclusive of interest and cost, as a damage award in this case.

4. I will not ask the Court or jury to render a verdict in the Plaintiff's favor in excess of \$75,000.00, exclusive of interest and cost.

5. The Plaintiff will not accept more than \$75,000.00, exclusive of interest and cost, in full satisfaction of this case.

6. This Court does not have subject matter jurisdiction over this case because the amount in controversy does not exceed \$75,000.00 exclusive of interest and cost.

s/ John A. Tinney
Attorney for Plaintiff

STATE OF ALABAMA
RANDOLPH COUNTY

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that John A. Tinney whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 4th day of October, 2007.

s/Teri Mitchum Tennant
Teri Mitchum Tennant
Notary Public - State at Large
My Commission Expires: 6-18-9